

Decision 97-05-019 May 6, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of POPP Telcom Incorporated for a Certificate of Public Convenience and Necessity to Operate as a Reseller of Intrastate Interexchange Telecommunications Services Within the State of California.

Application 96-11-024
(Filed November 6, 1996;
Supplemented February 28 and
March 7, 1997)

O P I N I O N

ORIGINAL

POPP Telcom Incorporated (applicant), a Minnesota corporation, qualified to do business in California, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to permit it to resell interLATA telephone services in California and intraLATA telephone service.¹ Applicant seeks to offer inbound and outbound intrastate toll services, 800 service, calling cards and intrastate directory assistance. Applicant will provide assisted operator services.

By Decision (D.) 84-01-037 (14 CPUC2d 317 (1984)) and later decisions, we authorized interLATA entry generally. However, we limited the authority conferred to interLATA service; and we subjected the applicants to the condition that they not hold themselves out to the public to provide intraLATA service. Subsequently, by D.94-09-065, we authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.

The Commission has established two major criteria for determining whether a CPCN should be granted to a facilities based reseller. The applicant must demonstrate that it has a minimum of \$100,000 of cash or cash equivalent (as described in

¹ California is divided into ten Local Access and Transport Areas (LATAs) of various sizes, each containing numerous local telephone exchanges. "InterLATA" describes services, revenues, and functions that relate to telecommunications originating in one LATA and terminating in another. "IntraLATA" describes services, revenues, and functions that relate to telecommunications originating and terminating within a single LATA.

D.91-10-041, Appendix A, Paragraph 5.1 (41 CPUC2d 505 at 520)), reasonably liquid and readily available to meet the firm's start-up expenses. Such applicants shall also document any deposits required by local exchange carriers or interexchange carriers (IECs) and demonstrate that they have additional resources to cover all such deposits. Any applicant who can demonstrate that \$100,000 of cash is not needed for its first year of operation, may be granted a CPCN with a lesser amount, based on the sufficiency requirements set forth in Ordering Paragraph 1.a of D.91-10-041. In addition, an applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business. (D.90-08-032, 37 CPUC2d (130, at 147-48, 156, 158).)

As part of its supplemental filed information, applicant provided an unaudited balance sheet and income statement as of December 31, 1996 demonstrating that it has more than \$100,000 in unencumbered cash. Applicant also provided information regarding a line of credit in excess of this amount which is also available to it. This indicates that applicant has more than \$100,000, consisting of cash. It satisfies our criteria for being reasonably liquid and readily available to meet the applicant's needs.

Applicant has provided information on its key managers, indicating their education and experience. It can be summarized as follows:

- a. William J. Popp, applicant's president and chief executive officer, founded applicant in 1981. He began his telecommunications carrier in 1971 as a telephone system installer, then in 1973 rose to telephone system design and marketing. In 1980, he joined Sharecom, a start-up long distance telephone company. The following year he founded applicant. He is also part owner of the Minnesota Timberwolves NBA franchise.
- b. Victoria L. Boyd, executive vice president of operations and planning for applicant, joined the company in 1996. For 24 years prior, she worked at U.S. West Communications (U.S. West), beginning as an engineer supervisor in operations and engineering, and ultimately rising to the director of operations and systems for Enterprise Networking Services at U.S. West. She hold a B.S. from Iowa State University.
- c. Eric, T. Hyde, executive vice president of sales and marketing, joined applicant in early 1997. He began his career in 1971 with

Northwestern Bell Telephone Company. In 1984, he joined U.S. West and rose to vice president and general manager of exchange carrier services in 1996. He holds a B.A. from the University of Northern Iowa and an M.B.A. from the University of Minnesota.

- d. Pam Lelm, applicant's network manager since 1984, previously worked for Prudential Property & Casualty Insurance Company.
- e. Tommie S. Braddock, applicant's director of IS/telcom technology, joined the company in 1996. She was previously the information services manager of St. Paul Book & Stationery Co. from 1993 to 1996. From 1987 to 1993, she was a project manager and systems analyst at IMPACT Corporation. She holds a B.S. from the University of Minnesota and is currently a graduate student working towards an M.S. in telecommunications at Saint Mary's University.

We will authorize the interLATA and intraLATA services that applicant seeks to provide.

Findings of Fact

1. Applicant served a copy of the application upon 401 telephone corporations with which it is likely to compete.
2. A notice of the filing of the application appeared in the Commission's Daily Calendar on November 20, 1996
3. No protests have been filed.
4. A hearing is not required.
5. By prior Commission decisions, we authorized competition in providing interLATA telecommunications service but generally barred those offering such service from holding out to the public the provision of intraLATA service.
6. By D.94-09-065, we authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.
7. Applicant has demonstrated that it has a minimum of \$100,000 of cash, reasonably liquid and readily available to meet its start-up expenses.
8. Applicant has represented that no deposits will be required by local exchange companies or IECs to extend service into California.

9. Applicant's technical experience consists of five employees with a combined experience of over 70 years in telecommunications.

10. Applicant has submitted as a supplement to its application a complete draft of applicant's initial tariff which complies with the requirements established by the Commission including prohibitions on unreasonable deposit requirements.

11. Applicant has represented that no one associated with or employed by applicant was previously associated with a nondominant interexchange carrier (NDIEC) that filed for bankruptcy or went out of business.

12. Since no facilities are to be constructed, it can be seen with certainty that the proposed operation will not have a significant effect upon the environment.

13. The Commission has routinely granted NDIECs, such as applicant, an exemption from Rule 18(b) to the extent that the rule requires applicant to serve a copy of its application on cities and counties in the proposed service area and to the extent that it requires applicant to provide a conformed copy of all exhibits attached to applicant's filed application to potential competitors.

14. Exemption from the provisions of PU Code §§ 816-830 has been granted to other resellers. (See, e.g., D.86-10-007 and D.88-12-076.)

15. The transfer or encumbrance of property of NDIECs has been exempted from the requirements of PU Code § 851 whenever such transfer or encumbrance serves to secure debt. (See D.85-11-044.)

Conclusions of Law

1. Applicant has the financial ability to provide the proposed service.
2. Applicant has made a reasonable showing of technical expertise in telecommunications.
3. Public convenience and necessity require the interLATA and intraLATA services to be offered by applicant.
4. Applicant is subject to:
 - a. The current 3.2% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund

- the Universal Lifeline Telephone Service (PU Code § 879; Resolution T-15799, November 21, 1995);
- b. The current 0.36% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Relay Service and Communications Devices Fund (PU Code § 2881; Resolution T-16017, April 9, 1997);
 - c. The user fee provided in PU Code §§ 431-435, which is 0.11% of gross intrastate revenue for the 1996-1997 fiscal year (Resolution M-4782);
 - d. The current surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-A (PU Code § 739.30; D.96-10-066, pp. 3-4, App. B, Rule 1.C; set by Resolution T-15987 at 0.0% for 1997, effective February 1, 1997);
 - e. The current 2.87% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-B (D.96-10-066, p. 191, App. B, Rule 6.F.); and
 - f. The current 0.41% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Teleconnect Fund (D.96-10-066, p. 88, App. B, Rule 8.G.).
5. Applicant should be exempted from Rule 18(b)'s requirement of service of the application on cities and counties in the proposed service area and service of all exhibits attached to this application on potential competitors.
 6. Applicant should be exempted from PU Code §§ 816-830.
 7. Applicant should be exempted from PU Code § 851 when the transfer or encumbrance serves to secure debt.
 8. The application should be granted to the extent set forth below.
 9. Because of the public interest in competitive interLATA and intraLATA services, the following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity (CPCN) is granted to POPP Telecom Incorporated (applicant) to operate as a facilities-based reseller of interLocal

Access and Transport Area (interLATA) and, to the extent authorized by Decision (D.) 94-09-065, intraLocal Access and Transport Area (intraLATA) telecommunication services offered by communication common carriers in California.

2. Applicant shall file a written acceptance of the certificate granted in this proceeding.

3. a. Applicant is authorized to file with this Commission tariff schedules for the provision of interLATA and intraLATA service. Applicant may not offer interLATA and/or intraLATA service until tariffs are on file. Applicant's initial filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI, and shall be effective not less than one day after filing. Applicant shall comply with the provisions in its tariffs.

b. Applicant is an NDIEC. The effectiveness of its future tariffs is subject to the schedules set forth in Ordering Paragraph 5 of D.90-08-032 (37 CPUC2d 130 at 158), as modified by D.91-12-013 (42 CPUC2d 220 at 231) and D.92-06-034 (44 CPUC2d 617 at 618):

"5. All NDIECs are hereby placed on notice that their California tariff filings will be processed in accordance with the following effectiveness schedule:

"a. Inclusion of FCC-approved rates for interstate services in California public utilities tariff schedules shall become effective on one (1) day's notice.

"b. Uniform rate reductions for existing services shall become effective on five (5) days' notice.

"c. Uniform rate increases, except for minor rate increases, for existing services shall become effective on thirty (30) days' notice, and shall require bill inserts, a message on the bill itself, or first class mail notice to customers of the pending increased rates.

"d. Uniform minor rate increases, as defined in D.90-11-029, for existing services shall become effective on not less than five (5) working days' notice. Customer notification is not required for such minor rate increases.

"e. Advice letter filings for new services and for all other types of tariff revisions, except changes in text not affecting rates

or relocations of text in the tariff schedules, shall become effective on forty (40) days' notice.

"f. Advice letter filings merely revising the text or location of text material which do not cause an increase in any rate or charge shall become effective on not less than five (5) days' notice."

4. In connection with the provision of Assisted Operator Service services, applicant shall adhere to the following conditions:

- a. Applicant shall inform all customers who inquire that 0- calls intraLATA will be handled in accordance with D.94-09-065 (56 CPUC2d 117) and subsequent decisions.
- b. For completion of (0+ and 1+) calls from nonutility pay phones, applicant will charge customers no more than interLATA-intrastate or intraLATA calling than the tariffed rates of AT&T Communications, Inc. or Pacific Bell, respectively, plus any additional amounts permitted by the Commission.

5. Applicant may deviate from the following provisions of GO 96-A:

(a) paragraph II.C.(1)(b), which requires consecutive sheet numbering and prohibits the reuse of sheet numbers, and (b) paragraph II.C.(4), which requires that "a separate sheet or series of sheets should be used for each rule." Tariff filings incorporating these deviations shall be subject to the approval of the Commission's Telecommunications Division. Tariff filings shall reflect all fees and surcharges to which applicant is subject, as reflected in Conclusion of Law 4.

6. Applicant shall file as part of its initial tariff, after the effective date of this order and consistent with Ordering Paragraph 3, a service area map.

7. Prior to initiating service, applicant shall provide the Commission's Consumer Services Division with the applicant's designated contact person(s) for purposes of resolving consumer complaints and the corresponding telephone number. This information shall be updated if the name or telephone number changes or at least annually.

8. Applicant shall notify this Commission in writing of the date interLATA service is first rendered to the public within five days after service begins and again within five days of when intraLATA service begins.

9. Applicant shall keep its books and records in accordance with the Uniform System of Accounts specified in Title 47, Code of Federal Regulations, Part 32.

10. In the event the books and records of the applicant are required for inspection by the Commission or its staff, applicant shall either produce such records at the Commission's offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to applicant's office.

11. Applicant shall file an annual report, in compliance with GO 104-A, on a calendar-year basis using the information request form developed by the Commission Staff and contained in Attachment A.

12. Applicant shall ensure that its employees comply with the provisions of Public Utilities (PU) Code § 2889.5 regarding solicitation of customers.

13. The certificate granted and the authority to render service under the rates, charges, and rules authorized will expire if not exercised within 12 months after the effective date of this order.

14. The corporate identification number assigned to applicant is U-5767-C which shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

15. Within 60 days of the effective date of this order, applicant shall comply with PU Code § 708, Employee Identification Cards, and notify the Director of the Telecommunications Division in writing of its compliance.

16. Applicant is exempted from the provisions of PU Code §§ 816-830.

17. Applicant is exempted from PU Code § 851 for the transfer or encumbrance of property, whenever such transfer or encumbrance serves to secure debt.

18. In response to the applicant's request for waiver, applicant is exempted from Rule 18(b) of the Commission's Rules of Practice and Procedure to the extent that the rule requires applicant to serve a copy of its application on the cities and counties in

which it proposes to operate and to the extent that the rule requires applicant to serve a copy of all exhibits attached to its application on potential competitors.

19. If applicant is 90 days or more late in filing an annual report or in remitting the fees listed in Conclusion of Law 4, Telecommunications Division shall prepare for Commission consideration a resolution that revokes the applicant's CPCN, unless the applicant has received the written permission of Telecommunications Division to file or remit late.

20. The application is granted, as set forth above.

21. Application 96-11-024 is closed.

This order is effective today.

Dated May 6, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners

TO: ALL INTEREXCHANGE TELEPHONE UTILITIES

Article 5 of the Public Utilities Code grants authority to the California Public Utilities Commission to require all public utilities doing business in California to file reports as specified by the Commission on the utilities' California operations.

A specific annual report form has not yet been prescribed for the California interexchange telephone utilities. However, you are hereby directed to submit an original and two copies of the information requested in Attachment A no later than March 31st of the year following the calendar year for which the annual report is submitted.

Address your report to:

California Public Utilities Commission
Auditing and Compliance Branch, Room 3251
505 Van Ness Avenue
San Francisco, CA 94102-3298

Failure to file this information on time may result in a penalty as provided for in §§ 2107 and 2108 of the Public Utilities Code.

If you have any question concerning this matter, please call (415) 703-1961.

ATTACHMENT A

Information Requested of California Interexchange Telephone Utilities.

To be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3251, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

1. Exact legal name and U # of reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.).
If incorporated, specify:
 - a. Date of filing articles of incorporation with the Secretary of State.
 - b. State in which incorporated.
6. Commission decision number granting operating authority and the date of that decision.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. A list of all affiliated companies and their relationship to the utility. State if affiliate is a:
 - a. Regulated public utility.
 - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.

(END OF ATTACHMENT A)